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July 11, 2008

VIA HAND DELIVERY

Honorable Thomas P. Griesa
United States District Judge, SDNY
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

*to answer
7/24/08
Philip Frank
(Part I)*

Re: Steven Jude v. City of New York et al., 08 Civ. 4836 (TPG)

Your Honor:

I am an Assistant Corporation Counsel in the Special Federal Litigation Division of the New York City Law Department assigned to the defense of the above-referenced matter on behalf of defendant City of New York and New York City Department of Correction Commissioner Martin Horn ("City defendants"). In essence, plaintiff's complaint alleges individual correction officers failed to protect him from another inmate on or about August 3, 2006. Specifically, plaintiff alleges that several inmates assaulted him. For the reasons set forth below, I write to respectfully request a sixty (60) day enlargement of time, until September 12, 2008, for City defendants to respond to the complaint.¹ Based upon the date of service on City

¹ Upon information and belief, Department of Correction Disability Rights Coordinator for Inmates Nina Edwards was served with a copy of the summons and complaint on June 24, 2008. This office has not discussed with Ms. Edwards the manner of service and we make no representation herein as to the adequacy of service upon her. A decision concerning this office's representation of Ms. Edwards has not yet been made and accordingly this application is not made on her behalf. Additionally, according to the docket sheet, the individuals named in the caption as Deputy Warden Vincent P. Baiardi, Captain Nelson, and Correction Officer Thomas have not been served with process. However, if Nina Edwards, Deputy Warden Baiardi, Captain Nelson, and Correction Officer Thomas are properly served prior to September 12, 2008, we hope that the court will, *sua sponte*, extend their time to answer until September 12, 2008 so that this office can investigate plaintiff's allegations and decide whether to represent the individual defendants.

defendants, their response is presently due on or about July 14, 2008. Plaintiff is incarcerated and proceeding *pro se*; therefore, this application is made directly to the Court. I note further that no previous request for an extension has been made in this action.

There are several reasons for granting an enlargement of time for defendants to respond to the complaint in this matter. In accordance with this office's obligations under Rule 11 of the Federal Rules of Civil Procedure, we need time to investigate the allegations of the complaint. In this case, plaintiff alleges that defendants failed to protect him from another inmate. Accordingly, it is necessary for our office to acquire as much information as possible concerning this matter in order to properly assess the case and respond to the complaint. Given plaintiff's allegations that he suffered physical injuries as a result of the incident, this office is in the process of forwarding to plaintiff for execution a consent and authorization for the release of any records of medical treatment.

Further, assuming plaintiff is able to effect timely service on the individual defendants, the extension should allow time for this office to determine, pursuant to Section 50-k of the New York General Municipal Law, and based on a review of the facts of the case, whether we may represent the individually named defendants. See Mercurio v. City of New York, 758 F.2d 862, 864-65 (2d Cir. 1985) (quoting Williams v. City of New York, 64 N.Y.2d 800, 486 N.Y.S.2d 918 (1985) (decision whether to represent individual defendants is made by the Corporation Counsel as set forth in state law)).

I would like to assure the Court that we are attempting to move forward in this litigation as expeditiously as possible, and that the enlargement is necessary in order for us to proceed effectively. Accordingly, we would respectfully ask that the Court grant a sixty (60) day enlargement of time, until September 12, 2008, for City defendants to respond to the complaint.

I thank the Court for its time and consideration of this request.

Respectfully submitted,



Philip S. Frank (PF-3319)
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cc: **Via First Class Mail**

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